

Asencio v. Mukasey, No. 04-76739

JUL 03 2008

GRABER, Circuit Judge, concurring in part and dissenting in part:

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

I respectfully dissent concerning the authenticity of the birth certificate. The IJ's statements referring to the "original" are ambiguous at best, because it appears from context that she was contrasting the "original in Spanish" with the "translation in English." Petitioner objected to the BIA that the birth certificate was not properly authenticated, but the BIA failed to address the issue in any way. I therefore would grant the petition in part and remand to the BIA to consider, in the first instance, whether the birth certificate was properly authenticated in accordance with then-governing law. INS v. Orlando Ventura, 537 U.S. 12, 16 (2002) (per curiam). I otherwise concur in the majority disposition.